# Adequacy of a Public Review Period near McBride

## Complaint Investigation 010327

**FPB/IRC/71**

**May 2002**

# Table of Contents

**The Investigation** ..... **1**

Background ..... 1

Relevant Legislation ..... 2

Issues ..... 2

**Discussion** ..... **3**

Should the forest health assessment have been made available during the review and comment period? ..... 3

Did the shortened review and comment period comply with the Code? ..... 3

Was it appropriate for the district manager to determine that a 30-day review period was adequate? ..... 6

**Conclusions** ..... **7**

# The Investigation

The district manager of the Robson Valley Forest District authorized a shortened review and comment period for an amendment to McBride Forest Industries' forest development plan (FDP) for Forest Licence A15429. The Fraser Headwaters Alliance (the complainant) submitted a complaint to the Forest Practices Board on July 1, 2001, asserting that the review and comment period was too short, and that a forest health assessment should have been made available to them during the review period.

## Background

In the past few years, the mountain pine beetle population has been increasing in the Rocky Mountain Trench area of the Robson Valley Forest District (the district). A small licensee operating in an area southeast of McBride, on the northeast side of Highway 16 between Horsey Creek and Small River, did not have the resources required to manage the beetle infestation. Consequently, the district had been managing beetle infestation by salvaging or falling and burning dead or infested timber.

In April 2001, the Ministry of Forests (MOF) reallocated harvesting operations and forest management responsibility in this area to McBride Forest Industries (the licensee) and the district directed the licensee to control the beetle infestation. This required an amendment to the licensee's forest development plan. The licensee immediately started to assess the beetle population and, together with the district, develop a beetle management strategy for the area. The district required the licensee to bait trees to trap beetles before the 2001 beetle flight.

Local residents noticed the licensee doing fieldwork and asked for information on the planned development. The licensee met with the concerned residents, then organized a public meeting for May 25, to explain its plans to control the beetle through harvesting. At that meeting, the licensee said:

- the beetle population was not epidemic, but the district and licensee believed that an epidemic was imminent;
- over 24 kilometres of new road was required to develop the area for harvesting;
- approximately 58,000 cubic metres of timber was needed to make the operation economically viable; and
- a 10-day review and comment period was proposed to expedite harvest before the next beetle flight.

The complainant objected to a shortened review period and requested that the proposed amendment go through the regular 60-day review and comment period. On May 29, the licensee asked the district manager for a 30-day review and comment period. On June 1, the district manager approved that request.

In the letter approving that request, the district manager asked the licensee to conduct a forest health assessment so he could evaluate the beetle population prior to approval of the amendment. The licensee advertised the amendment on June 6, and accepted comments until July 6. Local residents, including the complainant, continued to request a full 60-day review and comment period. The district manager refused those requests and explained that he was satisfied that 30 days was sufficient for the public to provide input.

MOF hired a new district manager and, on July 4, the complainant asked him to extend the review and comment period to 60 days. The new district manager reviewed the available information and refused that request in a letter dated July 5. The district manager did commit to considering information received up to the time he made the determination for the amendment.

On July 30, the licensee submitted the final amendment with the requested forest health assessment attached. Prior to approving the amendment, the district manager asked the complainant if it wanted to submit further information, but the complainant did not make a new submission. The district manager approved the amendment on August 15, 2001.

## Relevant Legislation

***Operational Planning Regulation***

Section 1: Definitions - expedited major salvage operation

Section 13: Forest health assessment required before review of forest development plans

Section 27: Review

## Issues

1) Should the forest health assessment have been made available during the review and comment period?

2) Did the shortened review and comment period comply with the Code?

3) Was it appropriate for the district manager to determine that a 30-day review period was adequate?

# Discussion

### 1) Should the forest health assessment have been made available during the review and comment period?

Section 27(2) of the *Operational Planning Regulation* (OPR) requires that, if a forest health assessment has been completed under section 13(b) of the OPR, the licensee needs to make it available in the review and comment period.

When the district manager approved the request for a 30-day review and comment period, he requested that the licensee conduct a forest health assessment for the area covered by and adjacent to the proposed cutblocks in the amendment. The assessment was required for evaluation prior to approval of the amendment. The licensee advertised the amendment and continued to work on that assessment through the review period. The assessment consisted of recording the locations of red- or green-attacked trees on a map while walking the area to lay out the cutblocks. Early in the review and comment period, the licensee gave a version of this map to the complainant. The map contained the information available at the time. In addition to the map, the assessment included information collected in previous years by the district. The licensee completed that assessment after the review and comment period, and submitted it to the district manager as part of the final amendment submission.

The district manager used his discretion to require a forest health assessment and specified the timing for completion of the assessment. Section 27(2) of the OPR did not apply because the assessment was not complete by the end of the review and comment period. Therefore, the licensee was not required to make the assessment available in the review and comment period.

### 2) Did the shortened review and comment period comply with the Code?

The definition of expedited major salvage is found is section 1 of the OPR. Section 27(4) of the OPR requires a 60-day review and comment period for a proposed FDP or amendment unless the entire FDP or amendment relates to an expedited major salvage operation. When that condition applies, the OPR allows a review and comment period as short as 10 days.

The complainant asserted that the amendment did not meet the criteria for an expedited major salvage operation. Even if it did, the complainant maintains that it is not justifiable to harvest such a large amount of extra timber to make the operation economical under expedited major salvage. Therefore, the complainant asserts that a shortened review period was inappropriate.

This issue raises two main questions: 1) Did the amendment meet the definition of an expedited major salvage operation; and 2) Did the entire amendment relate to an expedited major salvage operation? In other words, does the wording of OPR section 27(4)(b) mean an amendment can include timber that is not expedited major salvage?

**i) Did the amendment meet the definition of an expedited major salvage operation?**

There are two key components to the definition of expedited major salvage. First, specific categories of timber must total a volume of least 2,000 cubic metres. Second, harvest must be accelerated to either stop the insects from spreading or prevent a significant reduction in the economic value of the timber.

***Did the required volume of timber meet the definition?***

The specific categories of timber required to total 2,000 cubic metres are:

1. timber that is dead, infested or otherwise damaged;

2. timber required to be harvested to facilitate harvest of dead, infested or otherwise damaged timber; or

3. timber harvested for sanitation treatment.

A sanitation treatment is removal or modification of trees to reduce damage caused by forest pests and to prevent their spread. Although not mentioned in the FDP as a sanitation harvest treatment, it appears that much of the amendment met that definition. The amendment only targeted mature pine for harvest, which was a major component of all timber types in the amendment. The FDP prescribed partial cutting for all the cutblocks. In the late spring and early summer, the licensee baited areas to attract beetles for control through harvesting.

When the licensee requested a shortened review period, it estimated that there was between 1,800 cubic metres and 3,300 cubic metres of dead or infested timber in the area. The licensee proposed harvesting approximately 58,000 cubic metres in order to make the operation economically viable.

The district manager did not consider the entire 58,000 cubic metres to be volume meeting the above criteria. However, the district manager considered infested timber to mean a stand of timber rather than individual trees. He also considered that some of the timber removal would lower the susceptibility of the area to further beetle infestation. Further, he knew that by the time timber harvesting began, another beetle flight would occur and there would be much more than 2,000 cubic metres of dead or infested timber. Therefore, the district manager determined that the amendment met the volume requirement.

The Board agrees that infested and dead timber includes the stand rather than individual trees. Timber removed to lower the susceptibility meets the definition of sanitation harvest and could also be included in the total volume required. Both push the lower estimate well above the 2,000 cubic metres required in the definition. Therefore, it is the Board's opinion that the proposed amendment met the volume requirement.

*Was harvest required to be expedited?*

The licensee and district agreed to a sanitation beetle control strategy. The district required the licensee to bait the area before the 2001 beetle flight. The licensee needed to harvest infested and baited trees before the 2002 beetle flight. From this information alone, it does not appear that there was a need to expedite the harvest. However, the licensee needed narrow roads to accommodate visual quality objectives, and the narrow roads prohibited winter logging. The licensee estimated that it would only have four to six weeks to harvest all the infested trees in the spring of 2002. The licensee did not believe that it could build the road in the spring and harvest the infested stands before the 2002 beetle flight took place. Road building would have to begin in the fall of 2001. The licensee would have to have its amendment to the FDP approved before road permits could be issued. Consequently, the licensee required approval of the amendment by mid-summer of 2001 to have the road permits in place by the fall.

The district needed time to review the amendment before giving approval. The licensee needed time to incorporate comments received from the public and agencies before submitting the amendment to the district. Given a 30-day review and comment period ending the first week of July, there would only be one month for the licensee to incorporate comments and for the district to review the amendment. Although the time frame was short, the licensee thought it could harvest the infested trees before the next beetle flight. Therefore, the district manager determined that the process must be expedited to prevent the spread of insects.

The Board agrees with this reasoning and is of the opinion that the licensee needed a shortened review and comment period in order to expedite harvest of the infested timber before the 2002 beetle flight.

It is the Board's opinion that the amendment contained enough timber meeting the requirements in the definition of expedited major salvage operation, and a shortened review and comment period was appropriate for the timber meeting those criteria.

**ii) Did the entire amendment relate to an expedited major salvage operation?**

The district manager provided a written rationale for approving the 30-day review period. In it he stated that the entire amendment related to an expedited major salvage operation, but he did not provide details.

When he approved the 30-day review period, the district manager did not have a copy of the proposed amendment, but he knew the licensee's plans from discussions and meetings. Furthermore, the district manager had directed the licensee into the area to address the beetle infestation, and both the licensee and district were developing a strategy to bait and harvest the infested stands before the 2002 beetle flight.

During the investigation, the district manager explained that he did not consider the green timber required for economic viability to be included in the categories of timber in the definition of expedited major salvage. Some of the healthy standing trees could have been part

of a sanitation treatment, but the licensee agreed that some timber was included to offset the cost of developing roads and cutblocks in the amendment. Therefore, it is clear that some portion of the timber in the amendment was required to make the operation economically viable. The Board does not consider timber included for making an operation economically viable to be in the same category as timber required to facilitate the removal of dead or infested timber. Therefore, some of the timber included in the amendment was not timber included in the definition of an expedited major salvage operation.

However, OPR section 27(4)(b) allows timber not included in the definition of expedited major salvage to be included in an amendment with a shortened review period. The entire amendment must relate to, but not necessarily be, an expedited major salvage operation.

In this case, the entire amendment was a comprehensive plan to control the mountain pine beetle in one area, using the same roads, for a particular time period and in the same type of timber.

MOF allocated the area to the licensee to harvest the timber and the district directed the licensee to control the beetle. The beetle management strategy was an aggressive sanitation harvest. Although it may have been possible to propose harvesting less timber to achieve a sanitation treatment, the amendment met the definition of sanitation treatment in the OPR.

The district manager believed that beetles were dispersed throughout the area because the district had been managing the infestation for the last three years. Mature pine was a major component of all timber types in the amendment. The assessment, completed at the end of the review period, showed attacked trees dispersed in all but one cutblock. The timber in that cutblock was susceptible pine and the licensee found infested trees within 200 metres of that cutblock. The beetle management plan, approved by MOF, included baiting and harvesting all cutblocks to control the beetles.

Even though the licensee included timber to make the operation economically viable, it is the Board's opinion that the entire amendment related to an expedited major salvage operation. Therefore, the 30-day review period complied with the Code.

**3) Was it appropriate for the district manager to determine that a 30-day review period was adequate?**

The complainant and others did not believe the amendment met the requirements for a shortened review period and requested a normal 60-day review period. As shown above, the district manager concluded that the amendment complied with the Code requirements for a shortened review period. However, because there were numerous concerns about the length of the review period, the district manager determined the adequacy of an opportunity for review under section 27(8) of the OPR. The district manager wrote a rationale for this decision on June 1, 2001. In that rationale, he described how he was satisfied that the period would meet the intent of the review process. The district manager asked himself the following questions:

1. Are people aware of the amendment?

Local newspapers had been covering this issue and there had been a brief debate during an interview on CBC radio. The licensee had meetings with individuals and groups in the immediate vicinity of the licence. The licensee went on three field trips with interested parties, and organized a public meeting to discuss the amendment on May 25, 2001. When the district manager determined that the amendment would meet the criteria for a shortened review period, he required the licensee to mail flyers to local residents, advertising the review and comment period. Therefore, the district manager determined that the public was aware of the amendment.

2. Will people have an opportunity to review the amendment?

The Code required the amendment to be made available at the licensee's office during the review period. Therefore, the district manager determined that the public would have an opportunity to review the amendment.

3. Will people have sufficient time to prepare and submit comments?

The amendment related to a relatively small area (approximately 1,000 hectares) rather than an entire FDP. There would be no other FDPs going through the review and comment process concurrent with this amendment. Therefore, the district manager determined that 30 days would be sufficient time for people to prepare and submit comments.

The Board agrees that these are relevant factors to consider and that the district manager conducted an appropriate analysis. The Board also notes that section 27(4)(b) of the OPR requires a minimum 10-day review period and the district manager required a 30-day review period. Therefore, considering that people were aware of the amendment, the amendment was available for public viewing at the licensee's office (less than 30 minutes from the amendment area), and that people would have time to comment, it is the Board's opinion that it was appropriate for the district manager to determine that a 30-day review and comment period was adequate.

# Conclusions

1) The forest health assessment required by the district manager was not required to be completed before the review and comment period began and it had not been completed at that time. Therefore, it did not need to be available in the review and comment period.

2) The 30-day review and comment period authorized by the district manager met the requirements of the Code.

3) It was appropriate for the district manager to determine that a 30-day review and comment period was adequate.